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# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET N.W.  
WASHINGTON, D.C. 20554

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**DA 98-1792**

**PLEADING CYCLE ESTABLISHED FOR COMMENTS ON US WEST'S *EX PARTE*  
SUBMISSION CONCERNING THE PETITION FOR PREEMPTION,  
DECLARATORY RULING, AND INJUNCTIVE RELIEF FILED BY MCLEODUSA  
TELECOMMUNICATIONS SERVICES, INC.**

**CC DOCKET NO. 98-84****Released: September 3, 1998**

On June 2, 1998, McLeodUSA Telecommunications Services, Inc. (McLeodUSA) filed a petition pursuant to section 253 of the Communications Act, as amended (the Act), 47 U.S.C. § 253, seeking "preemption, declaratory ruling, and injunctive relief" regarding an order of the Nebraska Public Service Commission (Nebraska Commission) that allowed US WEST to withdraw Centrex service (the Nebraska Commission Order). According to McLeodUSA, the withdrawal of U S WEST's Centrex service prohibits the ability of McLeodUSA and other resellers to provide local exchange service in Nebraska in violation of section 253 of the Act, and such withdrawal also constitutes a violation of sections 251(b)(1) and 251(c)(4) of the Act. McLeodUSA therefore requests that this Commission issue a declaratory ruling and accompanying injunction ordering that those parts of the Nebraska Commission Order that allow US WEST to withdraw Centrex service violate and are preempted by sections 253 and 251(c)(4)(B) of the Act and are therefore null and void.

McLeodUSA's petition was placed on public notice on June 10, 1998. In response, comments and reply comments were filed by July 10, 1998 and July 27, 1998, respectively.

On August 21, 1998, US WEST filed an *ex parte* submission indicating that the Supreme Court of Nebraska has recently reversed and remanded the Nebraska Commission's Order and directed the Nebraska Commission to dismiss the underlying complaints for lack of standing. (A copy of the Nebraska Supreme Court's opinion is attached to U S WEST's

submission). U S WEST argues that, in light of the Nebraska Supreme Court's opinion, there no longer exists any potentially preemptable statute, regulation, or other legal requirement within the meaning of section 253(a) of the Act. U S WEST further argues, therefore, that this Commission should summarily dismiss McLeodUSA's petition as invalid and essentially moot.

The Commission hereby seeks comment on the information and arguments contained in U S WEST's *ex parte* submission of August 21, 1998. Such comment should include, *but not necessarily be limited to*, responses to the following inquiries: (1) does the complaint filed with this Commission by Enhanced Telemanagement Inc. pursuant to section 208 of the Act (File No. 96-23, which is referenced in the comments filed in this proceeding by Frontier Telemanagement, Inc.) provide an adequate alternative to the remedies sought in McLeodUSA's preemption petition? (2) Under Nebraska law, can a certificated local exchange carrier now file another complaint with the Nebraska Commission challenging U S WEST's withdrawal of Centrex, or would such a complaint be barred by time limitations or other procedural requirements? (3) In the absence of a Nebraska Commission order denying a complaint challenging U S WEST's withdrawal of Centrex, is there any Nebraska statute, regulation, or "other legal requirement" within the meaning of section 253(a) (*e.g.*, a Nebraska Commission order approving a request to withdraw service), the preemption of which would provide essentially the same relief as requested in McLeodUSA's petition?

Comments on U S WEST's *ex parte* submission may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Parties who file by paper must file an original and 5 copies of their comments on or before **September 24, 1998**, and an original and 5 copies of their reply comments on or before **October 5, 1998**. All pleadings must be filed with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554 and must reference CC Docket No. 98-84. An additional copy of all pleadings should also be sent to Janice Myles, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, D.C. 20036.

Parties who choose to file by paper should also submit their comments and reply comments on diskette. These diskettes should be submitted to: Cecilia Stephens, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case, CC Docket No. 98-84, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette). The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy

contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

U S WEST's *ex parte* submission is available for public inspection and copying during normal business hours in the FCC's Public Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies can also be obtained from ITS at 2131 20th Street, N.W., Washington, D.C. 20036, or by calling ITS at (202) 857-3800 or faxing ITS at 202-857-3805. We will continue to treat this proceeding as "permit, but disclose" for purposes of the Commission's *ex parte* rules. See generally 47 C.F.R. §§ 1.1200-1.1216.

For further information, contact Janice Myles of the Policy and Program Planning Division, Common Carrier Bureau, at (202) 418-1577.

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